

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

	X	
PEGGY ROIF ROTSTAIN, <i>et al.</i> , <i>on behalf of</i>	:	
<i>themselves and all others similarly situated,</i>	:	
	:	
Plaintiffs,	:	
	:	
and	:	
	:	Case No. 3:09-CV-02384-N-BQ
THE OFFICIAL STANFORD INVESTORS	:	
COMMITTEE,	:	
	:	
Plaintiff-Intervenor,	:	
	:	
-against-	:	
	:	
TRUSTMARK NATIONAL BANK, HSBC BANK	:	
PLC, THE TORONTO-DOMINION BANK,	:	
INDEPENDENT BANK F/K/A BANK OF	:	
HOUSTON, SG PRIVATE BANKING (SUISSE)	:	
S.A., and BLAISE FRIEDLI,	:	
	:	
Defendants.	:	
	:	
	X	

**DEFENDANTS’ RESPONSE TO THE OFFICIAL STANFORD INVESTORS
COMMITTEE’S NOTICE OF SUPPLEMENTAL AUTHORITY**

Defendants The Toronto-Dominion Bank, Trustmark National Bank, HSBC Bank plc, Independent Bank, successor by merger to Bank of Houston, Société Générale Private Banking (Suisse) S.A., and Blaise Friedli (collectively, “Defendants”) respectfully submit this response to the Official Stanford Investors Committee’s Motion for Leave to File Notice of Supplemental Authority (Dkt. No. 497).¹

¹ HSBC Bank plc, Société Générale Private Banking (Suisse) S.A., and Blaise Friedli submit this response subject to, and without waiving, the defense that they are not subject to personal jurisdiction in Texas.

OSIC claims that a recent decision from the Western District of Texas, *Milligan v. Salamone*, No. 1:18-cv-327-RP, 2019 WL 1208999 (Mar. 14, 2019), supports its Response to Defendants' Motion for Judgment on the Pleadings (Dkt. No. 490). As an initial matter, *Milligan* was decided on March 14, 2019, a full week before OSIC filed its Response to Defendants' Motion for Judgment on the Pleadings on March 21, 2019. OSIC cannot correct its failure to include *Milligan* in its opposition brief by filing a tardy notice of supplemental authority. See *Highland Capital Mgmt. L.P. v. Bank of Am., Nat'l Ass'n*, No. 3:10-cv-1632-L, 2013 WL 4502789, at *28 (N.D. Tex. Aug. 23, 2013), *aff'd*, 574 F. App'x 486 (5th Cir. 2014) ("The court generally discourages attempts to file supplemental authorities if the authorities were previously available when a party submitted its motion, response, or reply brief.").

Moreover, *Milligan* has no relevance to Defendants' Motion for Judgment on the Pleadings (Dkt. No. 488). It does not cite or consider the Fifth Circuit's decision in *In re DePuy Orthopaedics, Inc., Pinnacle Hip Implant Prod. Liab. Litig.*, 888 F.3d 753 (2018), the controlling precedent on which Defendants' Motion is based. In fact, the underlying appeal of the bankruptcy court's order in *Milligan* was filed on April 19, 2018, six days before *DePuy* was decided. See *Milligan*, No. 1:18-cv-327-RP, Dkt. No. 1. Thus, neither party briefed *DePuy* or the issue of whether common law aiding and abetting claims exist in Texas in either the bankruptcy court or the district court in *Milligan*. See *Milligan*, 2019 WL 1208999, at *9 n.10 ("The parties' briefs rely solely on Delaware law in discussing *Milligan*'s aiding-and-abetting claim against Greenberg."). Indeed, a motion for re-argument of the *Milligan* decision is pending on these very grounds. See *Milligan*, No. 1:18-cv-327-RP, Dkt. No. 20 (Motion for Rehearing).

Because the issue before this Court was not addressed in *Milligan*, and OSIC's supplemental authority notice of *Milligan* is untimely, that non-binding opinion has no bearing on Defendants' Motion for Judgment on the Pleadings or the Fifth Circuit's clear pronouncement in *DePuy* that OSIC cannot pursue aiding and abetting claims under Texas common law.

Dated: May 23, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on May 23, 2019, the foregoing document was filed with the Court's CM/ECF system, which has generated and delivered electronic notices of filing to all counsel of record who have consented to electronic service.

/s/ Rodney Acker

Rodney Acker